SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

----------x

EDWARD HUGHEY, Individually and On behalf of All Others Similarly Situated,

Index No.: 654427/2016

Plaintiff,

-against-

DECISION AND ORDER

METROPOLITAN TRANSPORTATION AUTHORITY and THE BOARD OF MANAGERS OF PENSIONS OF THE METROPOLITAN TRANSPORTATION AUTHORITY,

Motion #001

Defendants.

----------x

HON. CAROL R. EDMEAD, J.S.C.:

MEMORANDUM DECISION

This is an action for, *inter alia*, breach of contract of a pension plan.

Defendants, Metropolitan Transportation Authority (the "MTA") and the Board of Managers of pensions of the Metropolitan Transportation Authority (the "Board") (collectively "Defendants"), move to dismiss plaintiff, Edward Hughey's ("Plaintiff"), Complaint pursuant to CPLR §§ 3211, 217(1), and 7801, *et seq*.

FACTUAL BACKGROUND

Plaintiff is a retired, former employee of the LIRR, a subsidiary of the MTA, currently receiving a pension pursuant to the MTA Defined Benefit Pension Plan (the "Plan") (Compl. at ¶ 2).

According to Defendants, employees of commuter rails receive two types pension benefits. The Railroad Retirement Act provides commuter rail employees with, *inter alia*, Tier II benefits that become payable when the Commuter Rail employee has retired with the requisite years of service (Compl. at ¶¶ 17-18; Def. MOL, at 4). Additionally, MTA employees receive

pension benefits from the Plan (Compl. at ¶¶ 17-18). The Plan contains an offset provision, wherein the amount of benefit under the Plan is reduced by the Tier II benefit (*Id.*). The applicable provision of the Plan states:

> (i) Notwithstanding any provision of the Plan to the contrary, where any Benefit is payable under Sections 3.01, 3.02, 3.03 or 3.04 of the Plan and a "Tier II" Railroad Retirement Act benefit is payable to a Member, the Benefits payable to the Member shall be offset by the amount determined as in subsection (a), paragraph (ii) of this Section 3.07.
>
> (ii) The offset provided for in this subsection (a), paragraph (ii) shall be the "Tier II" Railroad Retirement Act benefit (hereinafter "Tier II Benefit") which would be payable to the Member involved at age 62 under "Tier II" (assuming the Member did not have 30 years of service covered by the Railroad Retirement Act, which would entitle him to unreduced Tier II benefits at age 60) and shall be computed before application of Section 3.08 of the Plan. Such offset shall commence when the Tier II Benefit becomes payable. Meehan Aff. ex. A, at Article 3.07(a))

Defendant Board is "authorized to interpret the Plan; establish and amend rules and regulations for its administration; determine eligibility for membership; and otherwise administer the Plan" (Compl. At 5; *see* Meehan Aff. ex. A, at Article 6.02(a)). Specifically, "the Plan provides that when the participant or beneficiary applies for benefits, the Secretary of the [Board] ("Secretary") determines the benefits in the first instance" (Def. Reply MOL, at 3; Meehan Aff. ex. A, at Article 6.03). If the applicant disputes the Secretary's findings, he may seek review from the Board (Meehan Aff. ex. A, at Article 6.03). The Plan confers on the Board of Managers,

> [1] sole and absolute discretionary authority to . . . decide questions, including legal or factual questions, relating to the calculation and payment of benefits under the Plan . . . [2] resolve and/or clarify any ambiguities, inconsistencies and omissions arising under the Plan, . . . [and 3] process, and approve or deny, benefit claims . . . ."
> (Def MOL, at 4-5; Meehan Aff. ex. A at Article 6.02).
>
> Any such determination is "final and binding" (Article 6.02).

The Complaint alleges that Plaintiff was employed at the LIRR from July 20, 1988 until September 30, 2013, when he retired at age 63.49 (Compl., at 10).

Upon retirement, for pension purposes, he was credited with a total of 26.53 years of service (*Id.*). By letter dated July 7, 2015, Plaintiff sought Board review of the Secretary's determination pursuant to Article 6.03 of the Plan (Def. MOL, at 6). In his letter, Plaintiff argued that "the current calculation of the MTA Defined Benefits Pension Plan Offset is not in accordance with the terms of the Plan" (Meehan Aff. ex. B). The Board denied Plaintiff's request in a letter dated February 29, 2016, stating:

> [the Board] addressed your request for review of your pension benefit calculations. Specifically, you appealed the application of the amount of the Railroad Retirement Board (RRB) Tier II offset age 63, rather than the amount as of age 62 . . . [u]pon review and discussion the Board has determined that the calculation and application of the RRB Tier II offset was applied correctly.
> (Meehan Aff. ex. C)

On August 23, 2016, almost six months after the Board denied Plaintiff's appeal, Plaintiff filed the instant Complaint.

Plaintiff's first cause of action for breach of contract alleges that the Secretary miscalculated the pension benefit he was entitled to receive, by calculating his RRA benefit at age 63, instead of at age 62 as required by Article 3.07(a). (Compl. at ¶¶ 20-25). Relying on Article V, Section 7 of the New York Constitution ("Impairment Clause"), Plaintiff alleges that the Plan is a "pension or retirement system of the state or of a civil division thereof," which establishes a "contractual relationship between the pension member and the pension or retirement system of the state or of a civil division thereof" (*Id.* ¶¶ 30-31). Therefore, by paying Plaintiff

smaller pensions than provided for pursuant to Article 3.07(a) of the Plan, the Board "violated and continues to violate [Plaintiff's] pension contract with the MTA" (*Id.* at ¶ 32).

Plaintiff's second cause of action alleges breach of the Impairment Clause (*Id.* at ¶ 35). Specifically, Plaintiff alleges that "underpayment" of his pension pursuant to the Plan "'diminishes' and 'impairs' the benefits of [Plaintiff's] membership in the Plan" (*Id.*). Additionally, the Complaint requests that Plaintiff's claim proceed as a class. (*Id.* at ¶ 36).

Defendant's Motion

Defendants argue that the first claim premised on the Impairment Clause, and the second claim for breach of contract which purportedly derives from the Impairment Clause, must be dismissed because the Impairment Clause, "does not apply to pension benefits provided by a plan sponsored by public authorities such as the MTA" (Def. MOL, at 8). Defendants cite *Collins*, wherein the Court held that, "a public authority is not a 'civil division' of the State within its meaning" (*Collins v. Manhattan & Bronx Surface Transit Operating Auth. (MABSTOA)*, 62 N.Y.2d 361, 366, 465 N.E.2d 811 [1984]).

As such, Plaintiff's "only conceivable claim is a claim for judicial review of an adverse administrative benefit determination under Article 78 of the CPLR" (Def. MOL, at 10). Article 78 creates a special proceeding for claims against a body or officer that seek review of administrative decisions. Accordingly, Article 78 is routinely used to adjudicate claims by MTA employees seeking "review of internal, administrative decisions, including benefit claims" (*Id.* at 11). Defendants argue that the Court should convert Plaintiff's motion into an Article 78 proceeding pursuant to CPLR § 103(c). Further, since the four-month statute of limitations

pursuant to Article 78 has elapsed, Plaintiff's action should be dismissed as time barred. The MTA's final determination was made on February 29, 2016, and Plaintiff filed this action on August 22, 2016, nearly six months later.

Finally, Defendants argue that the Complaint against "Metropolitan Transit Authority," must be dismissed since Plaintiff's claims seek benefits from the Plan and challenge the interpretation of the Plan by the Board, which is "separate" entity from the MTA (*Id.* at 13). The MTA plays no role in the Board's decisions.[1]

Plaintiff's Opposition

Plaintiff argues that he appropriately filed this action as a plenary action, and not as an Article 78 proceeding. The Impairment Clause establishes a contractual relationship between the parties. Defendants do not dispute the fact that a pension claim against the State of New York or one of its civil divisions is a contract claim governed by CPLR § 213(2), the 6-year statute of limitation. And, Defendants' reliance on *Collins* (62 N.Y.2d 361), which involved Article V, Section 6, to establish that the MTA is a "public authority," and not a "civil division" of the State, is misplaced. In any event, argues Plaintiff, since Section 7, the Impairment Clause, "is not necessary to support his contract claim [Plaintiff] will not brief his Second Claim" (Pla. Opp., at 6, fn.1).

Second, Plaintiff argues that his breach of contract claim was properly asserted in a plenary action. Plaintiff argues that he "has the same contractual relationship with the MTA

[1] Plaintiff does not object to the dismissal of the Complaint as against the MTA, "provided Defendants aver to the Court that the [Board] has the authority, means and will to pay any judgment issued by this Court in favor of [Plaintiff] and the Proposed Class" (Pla. Opp., at 14, n.3).

Pension Plan that employees of the State or a civil division thereof have with their respective pension systems" and because "the latter can vindicate their pension rights in plenary contract actions," Plaintiff can as well (Pla. Opp., at 7). Plaintiff cites to a Second Circuit case, wherein the federal district court noted that the plaintiff therein may pursue a common law action for breach of contract in the State Court to assert a claim that NYCERS denied her survivor's benefits without a hearing (*Campo v NYCERS*, 653 FSupp 895 [SDNY 1987]). Plaintiff also cites to the subsequent State Court case, in which it was held that the action was not time-barred by the four-month Statute of Limitations applicable to CPLR Article 78 proceedings (*Campo v. N.Y. City Employees' Ret. Sys.*, 223 A.D.2d 466, 466 [1st Dept 1996]) ("*Campo II*"). Plaintiff next points to caselaw holding that where the asserted form of proceeding has a defined statute of limitations, the Court should not seek to determine whether a shorter period might be applicable had Plaintiff attempted to have his rights adjudicated by some other procedure (*see Koerner v. State*, 62 N.Y.2d 442 [1984]). Moreover, Plaintiff argues that Defendants' request that the action be converted to a special proceeding pursuant to CPLR § 103(c) is misplaced since Plaintiff brought his claim as a plenary action, not an Article 78 proceeding. Further, caselaw holding that an Article 78 proceeding is the inappropriate avenue to pursue a contract claim alleging breach by a government body, required Plaintiff to bring his contract claim in a plenary action.

Defendants' Reply

Defendants argue that Plaintiff re-styled argument that as a Plan participant he has a contractual right to his pension independent of the Impairment Clause is incorrect. Instead, Article 78 governs this type of claim: where Plaintiff is seeking to overturn the final determination of the Board. Further, a contract providing its own administrative procedure for its

interpretation does not give rise to a free-standing breach of contract claim, but rather limits the contracting party to challenge the administrative determination under Article 78. Instead, Plaintiff's claim must be brought *via* an Article 78 proceeding, since it seeks review of the Board's determination of his pension benefit claim. Defendants' argue that the Plan "sets forth the procedure, and delegates the authority, for calculating benefits and appealing such calculations" (Def. Reply MOL, at 3).

Finally, with regard to dismissing the MTA as a defendant, Defendants argue that Plaintiff's response offering a condition to agreeing to dismissing the MTA is baseless and insufficient to oppose dismissal of the action against MTA.

Discussion

When a court determines a motion to dismiss, the court must accept the facts as alleged by the non-moving party and give that party "the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Goldman v. Metropolitan Life Ins. Co.*, 5 N.Y.3d 561, 570–71 [2005]).[2]

As to Plaintiff's remaining claim for breach of contract, Plaintiff's Complaint was improperly filed as a plenary action, and should have been brought pursuant to Article 78. Pursuant to the Plan, Plaintiff sought a pension calculation from the Secretary upon his retirement. Next, on July 7, 2015, he appealed the Secretary's calculation to the Board pursuant to Article 6.03 of the Plan. Finally, on February 29, 2016, Plaintiff received notice of the

[2] Inasmuch as Plaintiff does not defend against dismissal of his first claim under the Impairment Clause, such claim is dismissed.

Board's final and binding administrative determination to deny Plaintiff's request to recalculate his pension benefits as addressed in Article 6.02.

Defendants establish that claims by employees of the MTA seeking review of an "internal, administrative decision, including benefit claims," are routinely adjudicated *via* Article 78 proceedings" (Def. MOL, at 11); *Rubenstein v. Metro. Transp. Auth.*, 145 A.D.3d 453 [1st Dept 2016] (disability benefit claim determination); *Relyea v. Metro. Transp. Auth.*, 91 A.D.3d 787 [2d Dept 2012] (disability benefit claim determination); *Rios v. Metro. Transp. Auth.*, 6 Misc. 3d 1006(A), 800 N.Y.S.2d 355 [Sup. Ct., Rich. Cty. 2004] (health benefit claim against MTA subsidiary); *Rapp v. N.Y. City Transit Auth.*, 51 A.D.2d 551 [2d Dept 1976] (claim that Transit Authority Police Chief was improperly removed)).

Further, Defendants correctly argue that converting an action stylized as a plenary action to an Article 78 proceeding is appropriate here (*see* CPLR § 103(c) (allowing conversion from plenary action to Article 78 proceeding); *Mitchell v. NYU*, 129 A.D.3d 542, 543 [1st Dept 2015]; *In re Long Island Power Auth. Ratepayer Litig.*, 47 A.D.3d 899 [2d Dept 2008]; *Solnick v. Whalen*, 49 N.Y.2d 224, 230-31 [1980]; *Marenus v. Teacher's Retirement Sys. of the City of N.Y.*, 2013 NY Slip Op 33309(U), *8-12 [Sup. Ct., N.Y. Cty. Mar. 7, 2013] (unpublished)).

Plaintiff incorrectly relies on *Abiele* to establish that his claim is properly brought as a plenary action. *Abiele*, 91 N.Y.2d at 7-8. *Abile* is distinguishable from the present action. The contract in *Abile* did not allocate responsibility to a specific entity to interpret the contract, unlike here, where the Plan clearly designates the Board as the authority to interpret the Plan, precluding Plaintiff's right to assert his claim as a plenary action (*Abiele*, 91 N.Y.2d 9 ("[u]nless statutory language or public policy dictates otherwise, the terms of a written agreement define the rights and obligations of the parties to the agreement")).

Plaintiff's reliance on *Campo I* and *Campo II* is misplaced for two distinct reasons.

First, in *Campo I*, while the Second Circuit noted that in addition to an Article 78 proceeding, plaintiff may pursue a "[b]reach of contract claim against NYCERS in a New York state court," the Court's statement was made on the basis that "The New York State Constitution considers a City employee's participation in a pension plan to be a contractual relationship" (*see Campo*, 843 F.2d at 103, n.7, citing Article V, Section 7). Article V, Section 7 expressly states that ". . . membership in any pension or retirement system *of the state or of a civil division* thereof shall be a contractual relationship." (Emphasis added). Here, Article V, Section 7 does not apply to defendant, a public authority, in this context (*see e.g., Collins v. MABSTOA*, 62 N.Y.2d 361, 368-70, 477 N.Y.S.2d 91, 465 N.E.2d 811; *cf. Nickels v. N.Y. City Hous. Auth.*, 208 A.D.2d 203, 208, 622 N.Y.S.2d 718, 721-22, aff'd, 85 N.Y.2d 917, 650 N.E.2d 1320 [1995]).

Second, the holding in *Campo II* does not support Plaintiff's argument that his claim is properly brought as a plenary action. Indeed, where NYCERS conducts an administrative process, New York State courts routinely review decisions by NYCERS pursuant to Article 78 (*see Kaslow v. City of N.Y.*, 23 N.Y.3d 78, 84 [2014]; *Matter of Grant v. Murphy*, 289 A.D.2d 92, 93 [1st Dept 2001]; *Yovino v. N.Y. City Civil Employees' Ret. Sys.*, 18 Misc. 3d 1105(A), 856 N.Y.S.2d 27 [Sup. Ct., Kings Cty. 2007]; *Olick v. D'Alessandro*, 31 Misc. 3d 1218(A), 927 N.Y.S.2d 818 [Sup. Ct., N.Y. Cty. 2011]).

Plaintiff's reliance on *Corbeau* is also misplaced. *Corbeau* stands for the proposition that, *inter alia*, "[c]ontractual rights may not be resolved in CPLR article 78 proceedings seeking mandamus relief" (*Corbeau*, 32 A.D.2d at 959). However, as discussed above, Plaintiff is seeking the review of the merits of an administrative decision, and therefore must assert an Article 78 proceeding.

Accordingly, Defendants sufficiently established a basis to convert Plaintiff's Complaint into an Article 78 proceeding pursuant to CPLR § 103(c).

And, as to the timeliness of plaintiff's challenge to MTA's determination, it is uncontested that an Article 78 proceeding must be commenced within four months after the administrative determination to be reviewed becomes "final and binding upon the petitioner" (*Yarbough v. Franco*, 95 N.Y.2d 342 [2000]; CPLR § 217[1]; *New York State Assn. of Counties v. Axelrod*, 78 N.Y.2d 158 [1991]). An administrative determination becomes "final and binding" when the petitioner seeking review has been aggrieved by it. An administrative action is not final and binding within the contemplation of CPLR § 217 until it "has its impact" upon the petitioner (*Bludson v. Popolizio*, 166 A.D.2d 346, 347 [1st Dept 1990], *citing Matter of Edmead v. McGuire*, 67 N.Y.2d 714 [1986]). The statute of limitations does not begin to run until the petitioner receives notice of the determination *(Matter of Biondo v. New York State Bd. of Parole*, 60 N.Y.2d 832, 834 [1983]).

"The rule that the four-month limitations period begins to run on the date that the determination to be reviewed becomes final and binding would be completely emasculated if the petitioner could extend the commencement of this period by merely requesting that reconsideration be given to a prior decision because it is asserted that the earlier decision was based upon facts which were misconstrued" (*Gertler v. Goodgold*, 107 A.D.2d 481, 488 [1st Dept. 1985] *citing Matter of De Milio v. Borghard*, 55 N.Y.2d 216 [1982]).

Plaintiff filed the Complaint on August 23, 2016, just under six months after the Board's final determination, and beyond the four month statute of limitations pursuant to Article 78 (CPLR § 217). Given that Defendants' Article 78 proceeding was filed past the four-month

statute of limitations articulated in CPLR § 217 expired, Defendants' motion to dismiss Plaintiff's Complaint, is granted.

CONCLUSION

Based on the forgoing, it is hereby:

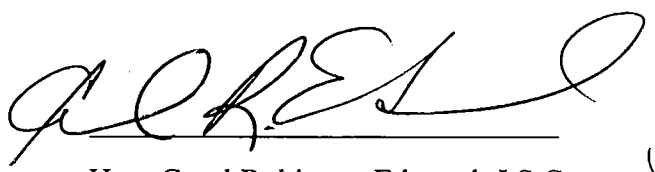
ORDERED that the motion of Defendants, Metropolitan Transportation Authority and the Board of Managers of Pensions of the Metropolitan Transportation, to dismiss the Complaint of Plaintiff, Edward Hughey, pursuant to CPLR §§ 3211, 217(1), and 7801, is granted in favor of all defendants, and the Complaint is hereby dismissed. And it is further

ORDERED that the Clerk may enter judgment accordingly. And it is further

ORDERED that Defendants shall serve a copy of this order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: February 14, 2017



Hon. Carol Robinson Edmead, J.S.C.

HON. CAROL R. EDMEAD
J.S.C.